

The petitioner states that in this matter, circumstances #1,2,3,6,7 and 8 are all present and as such justify the need for a hearing.

In Townsend v. Sain, 372 U.S. 293, the court found that a hearing MUST be granted to resolve factual disputes if the determinations by the state courts are for some reason inadequate.

Furthermore, the petitioner states that the appellate courts purported to make the findings of fact without an evidentiary basis, without full and fair adequate argument on the factual issues and without sufficient clarity of judgments of a type not within the competence of the appellate judges. The state judges rulings were abuses of discretion and deprived the petitioner of Due Process. The evidence presented in the state court was insufficient to detain the defendant and the state rulings did not address or resolve all of the controlling factual issues raised. Also, the findings the state court did make, relied upon applying an erroneous legal standard.

See also Elackburn v. Alabama 361 U.S. 199, 208-09.

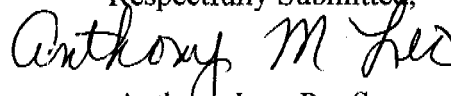
CONCLUSION

Fore the foregoing reasons, the petition asks this honorable court to hold an evidentiary hearing to resolve all the factual disputes set forth in his accompanying brief objecting to the statements made by the respondent. Until these disputes are resolved it will be difficult for this court to decide the claims before it.

The petitioner asks that both parties be present at this hearing and are allowed to present oral arguments and submit physical evidence relevant to these matters. The petitioner prays this honorable court will hold this hearing *before* it makes any further decisions on the habeas petition.

The petitioner further asks that this hearing be conducted as soon as possible and that a habe will need to be sent to Worcester County House of Correction ordering the sheriff to transport the petitioner to such hearing.

Respectfully Submitted,



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Dated 1-24-2005

Certificate of Service

I, Anthony Leo, hereby certify that a true copy of the above document was served upon the respondent, Maura D. McLaughlin, A.A.G. Comm. of Mass, by depositing the copy in the institution depository for pick up and delivery be first class mail, postage prepaid, as follows:

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